

**MINUTES FOR THE MEETING OF
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, SEPTEMBER 9, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:14a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ted Yamamura
Mr. Gerald DeMello
Ms. Taryn Schuman

Mr. Tim Johns
Mr. Ron Agor
Mr. Toby Martyn

STAFF

Mr. David Gaud, DOCARE
Mr. Sam Lemmo, OCCL
Ms. Christine Ogura, DOFAW
Mr. Mike Shinozuka, DOT
Ms. Holly McEldowney, Parks

Mr. Russell Tsuji, Land
Mr. Paul Conry, DOFAW
Mr. Dwayne Meadows, DAR
Ms. Lauren Tanaka, Parks

OTHERS

Ms. Pam Matsukawa, Deputy Attorney General
Mr. Max Graham, K-1
Mr. Bill Byrns, D-12
Mr. Jim Romy, E-1
Mr. Ed Holland, E-1
Mr. Campbell Cavasso, E-1
Mr. Sam Blair, E-1
Mr. Rick Ralston, E-1

Dr. Jonathan Schuer, C-3
Mr. Frank Hay, E-1
Mr. David Bettencourt, E-1
Mr. Edward Wels, E-1
Mr. Don Carswell, E-1
Mr. Paul Matsunaga, E-1

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of August 26, 2005

Unanimously approved as submitted (Johns/Yamamura).

Item B-1: Request Board Delegation of Police Powers to Conservation and Resources Enforcement Officers of the Division of Conservation and Resources Enforcement and Authorizes the Chairperson to delegate Police Powers and to Appoint and Commission Conservation and Resources Enforcement Officers.

David Gaud, Assistant Enforcement Chief of the Division of Conservation and Resource Enforcement (DOCARE) requested the Board appoint and commission the list of officers attached to the submittal as well as authorize the Chairperson to appoint and commission Enforcement officers.

Unanimously approved as submitted (Johns/Yamamura).

Item C-3: Memorandum of Agreement to Assist the Office of Hawaiian Affairs in the Acquisition and Management of 25,856 Acres of Land from the Estate of James Campbell at Wao Kele O Puna for the Preservation of Natural and Cultural Resources; Designation of the Area as a Forest Reserve; Disposition of the R-5 Lease and License Agreement for the Property; and Removal of the Geothermal Resource Subzone for the Property.

Member Johns conveyed that he has been involved with the Trust for Public Lands on fundraising matters as he was a part of their Board.

Paul Conry, Administrator of the Division of Forestry and Wildlife (DOFAW) let it be known the lands known as Wao Kele O Puna (WKOP) is currently in the hands of private owners. A little over two years ago the Department was approached by the Office of Hawaiian Affairs (OHA) to see if we were interested in working on a partnership through the Forest Legacy Program to purchase the subject property. The Department has since amended their Forestry Legacy Program to include this process to obtain the subject lands. Recently the asking price of the property has increased by \$250,000. OHA approached DLNR offering to provide the \$250,000 to enable the purchase of the property and expressed an interest in adding land ownership and management to their overall mission. The Department is supportive of OHA's interest in developing its capacity, experience and expertise in land management and in ensuring that this property is secured for long-term conservation management. Staff has been working with OHA to enable OHA to purchase the property and DLNR to provide management activities in the interim until OHA is ready to assume management responsibilities. Mr. Conry went over the major elements of the Memorandum of Agreement, which addressed eleven issues. Mr. Conry recommended the Board approve in concept the general terms of the MOA to assist OHA in the purchase and management of the Wao Kele O Puna tract, authorize the Chairperson to negotiate and sign the MOA on behalf of the Board and Department, authorize the Chairperson to negotiate and sign on behalf of the Board agreements to terminate the Geothermal Mining Lease R-5 and bifurcate the Well Monitoring License Agreement and authorize the Chairperson

to hold public hearings to designate the Wao Kele O Puna tract as a forest reserve and remove the Geothermal Resource Sub Zone designation on the site.

Dr. Jonathan Scheuer of the Office of Hawaiian Affairs read a letter from its administrator, Clyde Namuo, in support of staff's recommendation.

The Trust for Public Lands noted their support of staff's recommendation.

Written testimony was received from the Sierra Club.

Unanimously approved as submitted (DeMello/Johns).

Item K-1: Request to Amend Title 13, Chapter 5, Hawaii Administrative Rules (Chap 13-5 HAR) Related to Single Family Residential Standards at Haena, Kauai.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) let it be known the petitioner is requesting a change to amend Section 13-5-41 of the Hawaii Administrative Rules. As the rules now stand the minimum lot size for a single-family residence is 10,000 square feet. The petitioner submitted an application for a single-family residence for their lot in Haena but their application was rejected, as the size of the lot was 7,931 square feet. As background information, Mr. Lemmo reminded the Board of the policy they adopted in which they allowed one house per lot within the Haena Hui partition approved by the courts in 1967. In 1994, Title 13-5, HAR were adopted. The rules included a new provision requiring minimum lot size of 10,000 square feet for single-family residence. This rule precluded the construction of single-family residences on lots less than 10,000 square feet on lots within the Haena Hui partition. A request by staff to hold public hearings on this matter was granted and held on Kauai. Mr. Lemmo recommended the Board approve the petitioners' request to amend Section 13-5-41 of the Hawaii Administrative Rules inclusive of all amendments as proposed in Exhibit A of staff's submittal and authorize the forwarding of the rule amendment to the Governor for approval and enactment.

Max Graham, attorney for the petitioner's was present.

Unanimously approved as submitted (Agor/Johns).

Item K-2: Amendment to Conservation District Use Application (CDUA) KA-3240 for Kikiaola Small Boat Harbor Project (Navigation Improvement, Beach Nourishment).

Mr. Lemmo pointed out the US Army Corps of Engineers indicated they have a problem with the August 26, 2005 Board approval of CDUP KA-3240 for improvements to the Kikiaola Small Boat Harbor. Their problem is with Condition No. 1 and No. 8 which calls for the permittee to indemnify and hold the State of Hawaii harmless and that no motorized construction equipment be operated in the water. Mr. Lemmo recommended the Board approve this request to delete Condition No. 1 and Condition No. 8 of the CDUP KA-3240 for improvements to the Kikiaola Small Boat Harbor, Phase I and Phase II.

The Board amended the last sentence of the Recommendation Section to read

“ . . . Kikiaola Small Boat Harbor, Phase I and Phase II, at Kekaha, Kauai, ~~[subject to the following terms and conditions:]~~

Unanimously approved as amend (Agor/Martyn).

Item C-2: Request for Approval of Hawaii’s Comprehensive Wildlife Conservation Strategy.

Mr. Conry communicated in 2001 the U.S. Congress developed a Federal Aid program to address declining populations of non-game and non-endangered species and to prevent additional species from being listed as threatened or endangered. As a condition for participation in the program, Congress is requiring each State to prepare a Comprehensive Wildlife Conservation Strategy by October 1, 2005. Mr. Conry noted this document before the Board is the first comprehensive attempt to address the needs of both terrestrial and aquatic species from invertebrates to mammals in one document. Mr. Conry recommended the Board adopt and approve the Hawaii Comprehensive Wildlife Conservation Strategy subject to minor changes in style and grammar for submission to the U.S. Fish and Wildlife Service to meet the requirements of the State Wildlife Grants program.

Christine Ogura of DOFAW and Dwayne Meadows of Aquatic Resources addressed the following topics in their presentation: 1) What is a Comprehensive Wildlife Conservation Strategy; 2) How Hawaii’s Comprehensive Wildlife Conservation Strategy was developed; 3) The Elements and Contents of the Hawaii Comprehensive Wildlife Conservation Strategy and 4) The Ultimate Value to Conservation in Hawaii.

Unanimously approved as submitted (Johns/Martyn).

Item C-1: Request for Approval to Issue a Request for Proposal for Coordination of DLNR Youth Conservation Corps/Americorps Program.

Mr. Conry briefed the Board and recommended the Board approve the issuance of the RFP for Youth Conservation Corps program coordination.

The Board amended the Recommendation Section as follows

“That the Board approve issuance of the RFP for Youth Conservation Corps program coordination and authorize the Chairperson to move forward with the contract after the RFP process has been completed subject to review by the Office of the Attorney General.”

Unanimously approved as amended (Johns/DeMello).

Item M-1: Issuance of Revocable Permit for Inconsistent Use Royal Hawaiian Movers, Inc, Honolulu International Airport.

Item M-2: Amendment to Prior Land Board Action of January 28, 2000, Under Agenda Item K-3 Regarding the Issuance of a Non-Exclusive Lease of Easement by Direct Negotiation to Phoenician, LLC, Together with a Construction Right-of-Entry at Kalaeloa Barbers Point Harbor, Oahu.

Unanimously approved as submitted (Martyn/Johns).

Item D-12: Amend Prior Board Action of May 23, 2003 (Item D-6), Grant of Term, Non-Exclusive Easement for Existing Shoreline encroachments to The Keawe Group, LLC dba Hotel Molokai, Kamiloloa Homesteads, Molokai, TMK: (2) 5-4-02:seaward of 01.

Russell Tsuji, Administrator of the Land Division conveyed that the prior landowner, The Keawe Group was found to be encroaching upon State lands. The Keawe Group has since paid the fine, the easement consideration amount and other processing fees. Subsequently, The Keawe Group sold the subject property to Blue Island Property Holdings, LLC. Mr. Tsuji is recommending the Board amend the prior Board action of May 23, 2003 under agenda Item D-6 by changing the Applicant from The Keawe Group, LLC to Blue Island Property Holdings, LLC.

Unanimously approved as submitted (Yamamura/DeMello).

Item E-1: Request Approval to Dispose of Recreation Residences through Direct Negotiations, Drawing, and Request for Qualifications/Request for Proposals for Concession Lease, Kokee and Waimea Canyon State Parks, Waimea, Kauai.

Lauren Tanaka, Planner with the Division of State Parks reminded the Board on December 31, 2006 approximately 114 recreation residence and seven vacant lots lease in Kokee and Waimea Canyon State Parks will expire. Staff is requesting to allow direct negotiations with individuals whose cabins are currently deemed historic. There are approximately 46 residences that fall within this category. Ms. Tanaka pointed out Section 171-36.2 HRS, allows direct negotiations for the purposes of historic preservation and recreation projects. Staff is also requesting the Board allow direct negotiations with current lessees that are eleemosynary (2) or religious (4) organizations. Secondly, Ms. Tanaka is requesting the issuance of a RFQ/RFP for the lease of potentially 20 structures and lots to a single operator for short-term or daily rentals. As far as the cabins currently used by Divisions within the Department, Ms. Tanaka asked that the division be allowed to retain use of the structures and lots. Third, she would like the Department to conduct a series of drawings to select lessees for those remaining recreation residences and lots not disposed through direct negotiations, the bid process and not retained for use by DLNR divisions. Ms Tanaka pointed out a lessee has the option to remove their cabin from the leased lot prior to the expiration of the lease provided they obtain a CDUA. Should they choose not to remove the cabin, the structure would revert to the State.

Holly McEldowney, Archeologist with State Parks described to the Board how cabins were rated which was based on the level of the homes historic integrity. There were three assessments done on the historic level of the homes with the most recent assessment being done in 2003.

Structures deemed level 5, which is the highest level looked as it did when the structure was originally built, has no major modifications (if there have been modifications there are considered sympathetic to the original style and character of the building) and have architectural features that are distinctive of that time (i.e. stone work of the chimney). Level 4 is different from level 5 as it lacks outstanding architectural features. Level 3 structures are structures, which show signs of its historic style, but have been modified. The structure's integrity has been modified but is Reversible (i.e. porch, windows or painting). Level 2 structures have been heavily modified. Level 1 structures have significant modification and would be difficult to bring it back to its historic character.

Frank Hay a lessee since 1975 testified before the Board. He indicated the 1985 auction took place in the beginning of July and the leases ended at the end of July. At that auction there was no compensation to the lessee's, which resulted in homes being removed and some lots being vacated. Mr. Hay spoke of his dismay by the turn of events over the last few years. After the January meeting on Kauai Mr. Hay believed the Board heard the communities concerns and felt they were all headed in the same direction with regards to the future of Kokee that is until today's submittal by State Parks. He questions why there is a sudden change after eight years of working with the community. Mr. Hay suggested the Department negotiated new leases with the existing leaseholders and make the eight cabins under DLNR control available to the public at an auction. With regards to the structures on the parcel, Mr. Hay feels a provision should be added to the lease, which states that the new lessee must reimburse the previous lessee the fair market value of the structure. In closing he asked the Board to reject the submittal before them today.

Jim Romy, a lessee at Kokee whose structure has been rated 5 testified before the Board. Mr. Romy spoke of a time he had a home in Malekana. He communicated when those homes were condemned and turned over to the State; the homes were not up kept and are in complete disrepair. He believes the same situation will occur in Kokee should the Department move ahead with its plans

David Bettencourt came forward and gave the Board some background information into the Kokee situation. In 1985 Mr. Bettencourt worked with Sam Lee on Kauai to solve some of the problems that are occurring today. He proposed DLNR appraise the structures on the property. DLNR stated they did not have the funds or staff to appraise the structures. A second option was proposed in which the winning bidder would pay the lessee a pre-determined minimum amount for the cost of the structure on the property. He believes this would cut down the speculation. Another option proposed would be to rely on the tax assessed value of the structure, which at that time was extremely low. Mr. Bettencourt went on to say he believes an Environmental Impact Statement for Kokee should be done as the leases are for long-term use of the land. Also he does not believe the law allows existing religious organizations with leases the ability to negotiate directly with the State instead the State should negotiate with all religious organizations. The restriction given preference to Kauai residents although well intentioned is illegal.

Ed Holland, a caretaker of three cabins on water tank road testified in opposition to staff's submittal. Mr. Holland feels the proposal set forth by State Parks does not provide the same options for everyone. Those fortunate are able to directly negotiate a lease with the State while

others must proceed to auction. State Parks proposal is causing conflict amongst the lessees in Kokee and it is not good and not fair.

Edward Wells, a resident of Honolulu and an occasional user of a cabin in Kokee read from his written testimony in opposition to staff's submittal. Mr. Wells believes the plan set forth by State Parks falls short in its goal of giving the broader community the opportunity to lease State lands. Mr. Wells recommended the Department 1) negotiate directly with all the current leaseholders; 2) create at least 50 new camp lots for long-term leaseholders; 3) create the desired 20 additional short-term cabins close to the current lodge facilities and main roads; and 4) any interpretive center should be built from scratch and be located near or adjacent to the existing museum.

Campbell Canvass who served in the Legislature in 1985 during the last auction of the leases at Kokee testified. At present his brother has a cabin at Kokee. Mr. Cavasso also had constituents who held leases for Kokee lots. Mr. Cavasso feels the auction of 1985 was a "taking" of improvements. He spoke of the horror of what happened to the cabins (i.e. torching) as a result of the 1985 auction. He believes there should be some sort of compensation by the new lessees. Mr. Cavasso supports staff recommendation 1 and 2 but asked that all current lessees be allowed to directly negotiate with the State for new leases. As far as a concessionaire operating at the park, Mr. Cavasso feels they should operate a site close to the existing site of the present concessionaire.

Don Carswell, a lessee whose cabin has been deemed a 5 testified. Mr. Carswell feels the process in determining the rating of the cabins in Kokee was subjective. He believes there should be room for those not deemed historic to appeal the decision or allow the owners to bring their cabins up to a 4 or 5 rating. Mr. Carswell told the Board that all existing lessee should have the opportunity for direct negotiations.

Sam Blair, a lessee testified. He pointed out the commonality on all sides is the preservation of the historic nature of Kokee and providing maximum access to all citizens of Hawaii. The present plan set forth by State Parks does not achieve this goal. Mr. Blair spoke of the maintenance work he has performed on his cabin, which he feels, is consistent with the rest of the cabin but due to these changes his cabin was rated a 2. Mr. Blair feels what would be fair would be to auction all cabins but have potential bidders prequalify as well as a condition allowing the new lessee to compensate the current lessee based on the tax assessed value of the cabin or directly negotiate with all current leaseholders.

Paul Matsunaga, a leaseholder spoke in opposition of staff's recommendation. Mr. Matsunaga communicated that all of the cabins in Kokee should be considered part of the historic district and is able to negotiate directly with the State. He pointed out a lot of the leaseholders do not understand why their cabins were not deemed historic. Mr. Matsunaga believes those structures which were rated 1, 2 or 3 should have the opportunity to bring their cabins up to a 4 or 5.

Rick Ralston, a lessee came forward to testify. Mr. Ralston made it known that should he lose his lease (his cabin is rate a 5) he will not remove his cabin as he is in favor of historic restoration in Kokee. From a historic perspective he believes the private sector is in a better position to maintain historic properties. He spoke in favor of short-term rentals in Kokee but felt instead of

taking the existing cabins for this use the State would be in a better position if they would have rental cabins located in a clustered area where it is easily accessible.

Written testimony was received from Maui Architectural Group, Kokee Leaseholders Association, Frank Hay, Glen Hontz, Lissa Dunford, Cyndi and Jim Wilson, Rick Bundschuh, Peter Baldwin, Frederick Wichman, Charles Wichman, Meredith Whipple, Sandy Brodie, Kikiaola Land Company, Ltd., Cecilia Williams, Rita Peeters, Erik Coopersmith, Marsha Erickson, Mary Lu Kelley, Historic Hawaii Foundation, Kapua Janai, Office of Hawaiian Affairs, Mataia Reeves and Edward Wels.

The Board amended the following Recommendations

1) Recommendation 2)

“That the Board approves entering into direct negotiations at nominal rent for the lease of recreation residences to ~~[religious and eleemosynary organizations]~~ non-profit organizations holding current leases in accordance with section 171-43 and 171-43.1, HRS”

2) Delete Recommendation 3)

3) Recommendation 4)

“That the Board approves use of ~~[drawings]~~ an auction as described in this submittal and as authorized in sections 171-15 and 171-16, HRS, to select lessees for those structures and lots not disposed through direct negotiations, the RFQ/RFP bid process, or retained for use by DLNR Divisions.”

4) Add Recommendation 4a

“4a. An existing lessee has the opportunity to match the highest bidder in order to retain his/her cabin.”

5) Add Recommendation 4b

“4b. Any new lessee through the auction shall pay the former lessee the assessed value of the improvements (the improvements a lessee made from the time he/she took over the cabin or in the case of an original owner, the value he/she constructed and improved).”

Approved as amended (Agor/DeMello).

Member Johns and Member Martyn voted No.

Item D-1: Consent to Assign General Lease No. S-5024, Peter K. Baldwin Personal Representative of the Wilfred J. Baldwin Estate and the Anne K. Baldwin Estate, Assignors, to Alfred J. and Elizabeth K. Toulon Jr., Peter K.

Baldwin, and Cecilia Williams, as Tenants in Common, Assignees, Waimea, Kauai, TMK: (4) 1-4-03:03.

- Item D-2: Cancellation of Revocable Permit No. S-1589 to Hideo Nonaka; Issuance of Revocable Permit to JINTA, LLC, Hanapepe, Kauai, TMK: (4) 1-9-10:42.**
- Item D-3: Amend Prior Board Action of August 28, 1998, (Item D-20), Direct Sale of a Portion of an Abandoned Railroad Right-of-Way at Kapaa Homesteads, 1st Series, Kawaihau, Kauai, TMK: (4) 4-6-04:22.**
- Item D-4: Request to Write-Off Uncollectible Accounts on Hawaii and Oahu.**
- Item D-5: Results of Public Auction Sale of State of Hawaii Lease Lands on the Island of Hawaii, Held on July 14, 2005.**
- Item D-6: Amend Prior Board Action of June 9, 2005 (Item D-5), Reconsideration of Rent under General Lease No. S-5152 to Hawaii Conference Foundation, North Kona, Hawaii, TMK: (3) 7-6-16:33.**
- Item D-7: Consent to Assign General Lease No. S-5134, Jessica L. Lopez, Assignor, to Kristy L. Young, Assignee, Milolii-Hoopulua, South Kona, Hawaii, TMK: (3) 8-9-14:20.**
- Item D-8: Grant of Perpetual, Non-Exclusive Easement to Harold and Anne Sexton for Access and Utility Purposes, Koolau, Maui, TMK: (2) 1-1-08:por. 02.**
- Item D-9: Rescind Prior Board Action of May 23, 2003 (Item D-7), Grant of Perpetual, Non-Exclusive Easement to Kevin Lee and Karen Wolverton Gillies for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-02: por. 12.**
- Item D-10: Sale of Remnant to Walter and Shereen Naeole, Kahaukuloa Valley, Maui, TMK: (2) 3-1-04:121.**
- Item D-11: Rescind Prior Board Action of August 23, 2002 (Item D-14), Consent to Assign Perpetual, Non-Exclusive Access and Utility Easement [LOD No. S-27016], Caine Enterprises (Hawaii) Corporation, Assignor, to Valley Isle Enterprises.**
- Item D-13: Sale of Remnant Ditch Right-of-Way to EDRUCHO, LLC, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-43:por. 03.**
- Item D-14 Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Game Management and Public Hunting Purposes, Waialua, Oahu, TMK: (1) 6-8-02:07.**

Unanimously approved as submitted (Johns/Yamamura).

- Item F-1: Request for Approval to Appoint Dr. Dan A. Polhemus as Administrator for he Division of Aquatic Resources.**
- Item L-1: Approval for Award of Construction Contract – Job No. F00CF12A Individual Wastewater System Improvements at Russian Fort Elizabeth State Historical Park, Waimea, Kauai, Hawaii.**
- Item L-2: Approval for Award of Construction Contract – Job No. F00CF78A Individual Wastewater System at Polihale State Park, Waimea, Kauai, Hawaii.**
- Item L-3: Approval to Negotiate and Award of Construction Contract Job No. B41CM72A, Kahului Small Boat Harbor Improvements, Kahului, Maui, Hawaii.**
- Item L-4: Approval for Award of Construction Contract – Job No. J32CO30A Waimanalo Wastewater Treatment Plant Improvements Waimanalo, Oahu, Hawaii.**

Unanimously approved as submitted (Johns/Agor).

There being no further business, Chairperson Young adjourned the meeting at 1:18 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources